

**MINUTES  
of the  
FOURTH MEETING  
of the  
INDIAN AFFAIRS COMMITTEE**

**September 30-October 2, 2015  
Shiprock, Red Valley, Huerfano**

The fourth meeting of the Indian Affairs Committee was called to order by Senator John Pinto, co-chair, on Wednesday, September 30, 2015, at 10:29 a.m. at the John Pinto Library at Diné College in Shiprock.

**Present**

Rep. Sharon Clahchischilliage, Co-Chair  
Sen. John Pinto, Co-Chair  
Rep. D. Wonda Johnson (10/2)  
Rep. James Roger Madalena (10/2)  
Sen. Richard C. Martinez (9/30, 10/1)  
Sen. Nancy Rodriguez  
Sen. Benny Shendo, Jr. (10/2)  
Rep. James E. Smith  
Sen. William P. Soules (10/1, 10/2)

**Advisory Members**

Rep. Eliseo Lee Alcon  
Sen. Cisco McSorley (9/30, 10/1)  
Rep. Debbie A. Rodella (10/1, 10/2)

**Absent**

Sen. Ted Barela  
Rep. Zachary J. Cook  
Rep. Yvette Herrell  
Rep. Georgene Louis  
Sen. Cliff R. Pirtle  
Sen. John C. Ryan

Sen. Carlos R. Cisneros  
Sen. Stuart Ingle  
Sen. Daniel A. Ivey-Soto  
Rep. Patricia A. Lundstrom  
Sen. George K. Munoz  
Rep. Patricia Roybal Caballero  
Rep. Nick L. Salazar  
Sen. Clemente Sanchez

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)  
Michelle Jaschke, Researcher, LCS  
Mark Edwards, Drafter, LCS

**Wednesday, September 30** — John Pinto Library, Diné College

**Welcome, Invocation and Status Update**

Tommie Yazzie, vice president, Shiprock Chapter, Navajo Nation, gave an invocation. Senator Pinto then asked committee members and the audience to introduce themselves. Senator Pinto then asked that Representative Clahchischilliage chair the remainder of the meeting.

Dr. Maggie George, president, Diné College, welcomed the committee and said that the library in which the committee was meeting was the result of a \$5 million legislative effort led by Senator Pinto. She thanked the committee for its support of the dual credit program, noting that New Mexico took the lead in establishing a dual credit program, which was then copied by the State of Arizona. Dr. George said that the dual credit program was needed to help address the 52% student dropout rate in Indian country. Now, nearly 400 high school students are receiving college-level credit in mathematics and English at Diné College, setting them up to be successful in college when they graduate from high school. Dr. George noted that four New Mexico tribal colleges had formed a consortium, and the consortium was invited to work with the Higher Education Department on budget priorities. The other three tribal colleges in the consortium are running programs similar to Diné College.

Responding to questions, Dr. George said that Diné College offers two bachelor's degrees; a degree in bilingual education; and a degree in business and tribal management. The college is working to expand its curriculum to meet the work force needs in the area. Dr. George said that the college is trying to offer more public health training, but it is very expensive to provide. Currently, students seeking health care training are directed to San Juan College or Northern Arizona University. She said that local employers are also asking for graduates with training in energy industry-related accounting, procurement and finance management.

Daryl Begay, government and external affairs officer, Diné College, said that the college has worked with the Higher Education Department to develop a five-year capital infrastructure plan. He then presented three projects that the college is pursuing. In order of priority, the college is seeking funding for:

(1) a math and science building to house classrooms, laboratories and offices on its south campus. Mr. Begay said that the planning and design for the math and science building has been completed, and the college is now seeking \$5,625,000 for construction;

(2) roadway renovation of the access road and parking lot on the north campus. The access road is deteriorated, is a hazard for pedestrians and has limited wheelchair access. Mr. Begay said this project would cost \$454,000; and

(3) planning and design of an administration building on the south campus, projected to cost \$340,000.

### **Ute Mountain Ute — State Boundary Issue**

Manuel Heart, chair, Ute Mountain Ute Tribe, could not attend the meeting as scheduled; however, Duane "Chili" Yazzie, president, Shiprock Chapter, Navajo Nation, took the floor to explain the boundary dispute between the Ute Mountain Ute Tribe and the Navajo Nation. The boundary line between the Ute Mountain Ute Tribe and the Navajo Nation was established by Congress based on the established state line between New Mexico and Colorado. However, Mr. Yazzie said, the boundary line was incorrectly surveyed and the Ute Mountain Ute Tribe and the Navajo Nation are currently in dispute over the issue. Mr. Yazzie stated that claims have been made that the fence line had been moved by someone on behalf of the Ute Mountain Ute Tribe. Mr. Yazzie asked that the State of New Mexico formally weigh in on the dispute, because it is a state-line issue. He said that the Shiprock Chapter of the Navajo Nation would send a formal letter to the committee outlining the specifics of the dispute for the committee's later consideration.

### **Gadii'ahi Chapter**

Carol Etcitty-Roger, president, Gadii'ahi To'Koi Chapter, Navajo Nation, thanked the committee for funding it had received for its senior center. She then presented a proposal for road improvements for Navajo Road 57 (N57). The chapter is five miles northwest of Diné College's south campus, sits along the San Juan River and contains the communities of Gadii'ahi and To'Koi.

N57 is a six-mile road that serves two Navajo Nation chapters, Gadii'ahi and Beclabito, and is the only access road for the Gadii'ah/To'Koi communities. The road suffers from seasonal flooding due to inadequate culverts and drainage. Further, most of the road is unpaved, so it becomes an unusable mud track after heavy rains. As a result, children in the community miss school at times because school buses are not able to use the road. The N57 project would cost \$659,000. (See handout.)

Responding to a question, Ms. Etcitty-Roger said that the chapter had applied for Tribal Infrastructure Project Fund (TIF) funding. Inadequate school bus routes are a problem for many Navajo Nation chapters, and a regional system is being sought. A committee member asked if San Juan County was participating in the development of a regional system. An employee of San Juan County replied that the county believes it needs to get rights of way on these roads before it can participate. He said that getting the county's help on road maintenance, not new construction, is the key issue but that it is difficult to get rights of way on Indian trust lands. Similar road issues have been addressed in McKinley County by getting a memorandum of understanding (MOU) for road maintenance between the county and the Navajo Nation, and when state road funding is available, it is typically sent to the county. A committee member asked if San Juan County had a similar MOU for road maintenance. The San Juan County employee said there was one, but it lacked funding.

### **Upper Fruitland Senior Citizens' Building**

Lenora Williams, vice president, Upper Fruitland Chapter, Navajo Nation, spoke about the need for an expanded and improved senior center in the Upper Fruitland community. The center has a bus service that delivers lunches to homebound individuals, but the center needs a place for physical and social activities. Hubert T. Harwood, president, Upper Fruitland Chapter, Navajo Nation, said that the expanded center could also act as a safe haven to prevent elder abuse.

Ms. Williams said that the chapter received capital outlay funding a few years ago for the architectural design phase, and it has received other amounts from the Navajo Nation and various agencies. The chapter had a groundbreaking ceremony for the center in 2014, but construction has not begun. The chapter has built up \$700,000 to fund the project so far, but administrative delays have pushed the cost up to \$1 million.

### **San Juan Generating Station: Past, Present and Future**

Secretary of Environment Ryan C. Flynn outlined for the committee the effects of the federal Environmental Protection Agency's (EPA's) Clean Power Plan, Rule 111(d), on New Mexico's power plants. Referring to his handout, Secretary Flynn said that the rule is focused on electric power generation, which accounts for approximately one-third of total national greenhouse gas emissions. He said that the rule requires each state to develop its own plan by 2016 to reduce power plant emissions by 32% of the 2012 level by the year 2030. He said that although the Department of Environment (NMED) disagrees with some aspects of the structure and timing of the rule, the NMED will not fight the rule. He said that the NMED's position is that:

- (1) climate change is a real threat;
- (2) Congress has failed to address the issue, so the EPA rule is an attempt to do so; and
- (3) New Mexico is well-positioned to meet the requirements of the rule.

Regarding the effects of Rule 111(d), Secretary Flynn said that it would create a paradigm shift in power generation that will result in three primary outcomes: 1) power plant design will be driven by environmental factors as well as financial considerations; 2) coal-fired power generation will be dramatically reduced; and 3) the use of renewable energy sources and natural gas will dramatically increase. He said that nuclear power generation would also lose advantages under Rule 111(d).

Secretary Flynn said that neither proponents nor opponents of Rule 111(d) have good estimates of the costs involved. The EPA is estimating a national cost of a few billion dollars, while the United States Chamber of Commerce predicts that it will cost hundreds of billions of dollars. However, he said that New Mexico will be able to exceed the requirements of the rule because: 1) the scheduled retirement of two coal-burning units at the San Juan Generating Station to meet regional haze requirements will reduce the state's emission tonnage below the required targets; 2) a total of 174,000 tons of additional reductions will result from the retirement

of other plants in the state; and 3) the NMED is engaging many stakeholders in its development of its plan. The goal is to attain the best practicable emissions reduction, since Congress may change the target goals if it addresses the climate change issue at some point in the future.

Responding to questions, Secretary Flynn said that the courts have ruled that the federal Clean Air Act gives the EPA the authority to address climate change. The EPA's Rule 111(d) might be inefficient, given the way its authority was drafted, but the NMED agrees with the goal. He said that the NMED was however, challenging the EPA on other areas of Clean Air Act enforcement. As an example, he cited ozone regulation as a case in which the EPA's approach to regulation is workable for some areas of the country but not for others, such as those in western mountain regions.

Responding to other concerns of committee members, Secretary Flynn said that the NMED has not calculated the effect of EPA Rule 111(d) on coal contracts, but the consequences would be great. He said that there really is no comparison in job creation between coal and renewable energy industries. He said that the NMED is working with Public Service Company of New Mexico (PNM) to mitigate job losses in the energy sector.

If the EPA rejects New Mexico's reduction plan, the EPA has the power to develop its own plan for the state. In that case, the NMED would likely litigate and negotiate the issue simultaneously. Secretary Flynn cited the EPA's regional haze rule as an example. New Mexico did not submit a regional haze plan by the required 2010 deadline, and New Mexico ended up with an EPA plan instead. By developing its own plan for Rule 111(d), New Mexico will be in a better position to negotiate if the plan is rejected.

Noah Long, legal director, Western Energy Project, Energy and Transportation Program, Natural Resources Defense Council, said that the national use of coal power has declined since the high in the 1970s of over 50% of power generation to about 40% today. He said that trend will continue, noting that the power market in California is required to increase its use of renewable energy to 30% by 2030. Mr. Long said that those states that are moving quickly to renewable sources of energy have seen lower customer rate growth than those that are moving more slowly away from coal. Aside from emission controls, Mr. Long said that there are several other threats to the San Juan Generating Station, including that:

- (1) it was built in the 1970s and is now an old facility;
- (2) its high-altitude location has always made it less resilient compared to lower-elevation plants;
- (3) mirroring a national industry trend, the mining company under contract to the station lost 60% of its value last year, and, with the coal contract for the plant expiring in 2022, investors may start to leave; and
- (4) the plant is not competitive with other sources in kilowatt-per-hour costs.

In summary, Mr. Long said that the state should start planning now to replace the jobs and power generation from the San Juan Generating Station before the plant is truly at risk.

Ron Darnell, senior vice president of public policy, PNM Resources, gave the committee an overview of PNM services and the prospects for the San Juan Generating Station. (See handout.)

Mr. Darnell said that PNM is the largest investor-owned utility in New Mexico. It serves over 500,000 customers and provides 40% of the electricity used in the state. He said that the future of coal-power generation will depend on its economics, but that PNM is diversifying its power sources. PNM has pursued wind generation for many years and is now aiming to generate eight to 10 megawatts from geothermal sources in the Lordsburg area.

PNM has estimated the cost of upgrading the units at the San Juan Generating Station to meet the regional haze rules to be over \$1 billion. However, those upgrades would not help to meet the EPA Rule 111(d) carbon-emission standards. PNM's current plan is to close two units at the plant by January 1, 2018, but the Public Regulation Commission must approve the plan. Anticipating approval, PNM will own a little over 50% of the plant after 2018 and will have reduced its reliance on coal by over 36%.

Citing the natural gas power shortage a few years ago, Mr. Darnell said that power diversity adds security for customers. The current coal contract provides a hedge against volatility in natural gas costs. Further, he said, the utility must plan for 24-hour power generation and for the base load needs for peak usage times, which are problematic with solar and wind generation. Mr. Darnell also said that utility contracts are designed to smooth out price volatility over four- or five-year contracts. The result is rarely the lowest power price at any given moment, but it is a lower price over time.

Mr. Darnell said that in 2018, PNM will file a plan to serve its customers' power needs after the expiration of the 2022 coal contract. Considerations in that plan will include the cost of coal and the need to recapture the capital cost of the San Juan Generating Station, including upgrades to reduce mercury, nitrous oxide and other emissions required to meet the regional haze standard.

Cathy Newby, director of tribal government and customer engagement, PNM Resources, spoke about PNM's tribal outreach and job-loss mitigation efforts related to the retirement of two units at the San Juan Generating Station. She said that PNM works with 14 tribes, eight of which are customers. Other tribes are suppliers, and still others have involvement with PNM regarding transmission and distribution lines. She said that the unemployment rate within the Navajo Nation exceeds 50%, and the San Juan Generating Station is a big employer for the area, with 800 employees at the station and the mine.

Ms. Newby said that PNM has committed to retain current employees, but some of those jobs will be lost as employees retire or move on to other jobs. PNM has committed \$1 million over five years for job training focused on energy-sector jobs. PNM has partnered with Navajo Technical University and San Juan College to prepare students to take advantage of opportunities within a new job market through an American Indian engineering internship program. Participating students must be enrolled in New Mexico-based colleges and universities. Participants receive a broad range of work experience by working in six-month stints in different areas of energy production. She said that the energy sector jobs multiplier is five jobs in support industries for every energy sector job, so giving students a variety of experiences expands their marketability. The program is now in its third year of the five-year commitment.

### **Recess**

The committee recessed at 3:28 p.m.

### **Thursday October 1 — Red Valley Chapter House**

Senator Pinto reconvened the meeting at 10:23 a.m. He asked committee members, staff and members of the audience to introduce themselves, and then Lee Zhonnie, president, Navajo Red Valley Chapter, gave an invocation.

### **Welcome and Status Update**

Ella Frazier, vice president, Red Valley Chapter, Navajo Nation, introduced chapter officials and staff. Mr. Zhonnie then said that the chapter has three pressing issues: 1) school access; 2) the condition of Navajo Road 13 (N13); and 3) the reopening of the community center. Mr. Zhonnie thanked the committee for holding a meeting earlier in the year focused on school access across the New Mexico/Arizona state line. He said that the issue is particularly important to a community like the Red Valley Chapter, which has residents and facilities on both sides of the border. He reported that the day before, Arizona announced that families can send their children to school on either side of the state line, depending on the families' needs.

Regarding N13, Mr. Zhonnie told committee members that the road is a major transportation corridor between Shiprock, New Mexico, and Chinle, Arizona. He said that N13 is deteriorating and needs to be widened to meet traffic demand.

Ms. Frazier said that the community center had been delivering 40 to 50 meals per day to senior citizens before it was shut down three years ago. The meals were subsidized by both New Mexico and Arizona. It was believed that the center was shut down because another center opened nearby in Arizona, Ms. Frazier said. A committee member said that the number of daily meals provided probably would not have justified a shut-down and requested background details from chapter staff in order to follow up on the issue with the Aging and Long-Term Services Department.

The committee then entered into a general discussion of the challenges faced by a cross-boundary community like the Red Valley Chapter. Ms. Frazier said that local services are limited. There are a number schools in the valley and a convenience store nine miles away, but anything else requires a 60-mile round trip to Shiprock. Navajo Council Delegate Amber Kanazbah Crotty said that the relative isolation of the community has contributed to a spate of suicides recently, and the Navajo Nation has declared a state of mental health emergency in the Red Valley Chapter. A committee member asked about the potential for funding collaborative efforts among the Navajo Nation and the states of New Mexico and Arizona to meet community needs. Ms. Crotty said that the Navajo Nation is working to streamline its processes for collaboration with the State of New Mexico.

### **School Bus Transportation Issues**

Larry Ute Joe, senior planner, Navajo Division of Transportation (NDOT), referred to his handout ("Navajo Nation School Bus Routes") to give the committee an overview of the challenges facing the road system within the Navajo Nation. He said that the 15,000-mile system includes approximately 6,000 miles of Bureau of Indian Affairs (BIA) roads and 5,000 miles of Navajo Nation roads and that less than 25% of these roads are paved. He said that during heavy rains, it is common for cars to get stuck in the mud, bus routes to be blocked and culverts to be washed out. He also said that the problems extend to residential subdivisions that have unpaved streets and no sidewalks.

Mr. Joe said that the need for repair greatly exceeds available funding. Needed improvements for school bus routes within the Navajo Nation are estimated at \$70 million, and the Navajo Nation receives some funding from the Federal Highway Administration, but only enough to build 19 miles of roads per year. He said that the NDOT must spread funding across 110 chapters when, for example, a single chapter, such as the Red Valley Chapter, has \$4.4 million in unmet road needs.

Mr. Joe said that, aside from construction needs, road maintenance is a critical need. Mr. Joe said that the priority request to the state is for assistance on road maintenance, not construction.

Melissa Kelly, chapter manager, Beclabito Chapter, Navajo Nation, gave a presentation on a proposed rehabilitation project for Navajo Road 5113 (N5113). Ms. Kelly said that the Beclabito Chapter is 18 miles west of Shiprock on New Mexico Highway 64. The main service facilities within the community are an elementary school building, a senior center and a gas station. The nearest health care facilities are in Shiprock or Red Mesa, Arizona. Ms. Kelley said that much of N5113 is a washboard gravel road, and the road is subject to flooding and culvert washouts. The project is to redesign the road, provide adequate drainage, re-gravel and chip seal the road and purchase additional rights of way. The project would be done in two six-mile phases. Ms. Kelly said that the chapter is seeking \$1,800,000 for phase one of the project. (See handout for details.)



Stanley Wauneka, chapter manager, San Juan Chapter, Navajo Nation, gave a presentation on a proposal to improve Navajo Road 366 (N366). He said that the San Juan Chapter is halfway between Shiprock and Farmington and that N366 is a five-mile dirt road used by the community and used as a school bus route. N366 gets graded four times per year, but it needs to be upgraded to a semi-paved road. Mr. Wauneka said that the chapter is requesting \$1,725,000 for chip sealing and graveling of N366.

The committee then entered into a general discussion on the road needs within the Navajo Nation in northern New Mexico. A committee member asked what the Navajo Nation is doing to generate its own road funds. Darryl Bradley, acting division director, NDOT, said that the Navajo Nation receives about \$12 million per year from an 18-cents-per-gallon gasoline tax, \$6 million of which is available for road maintenance.

A committee member asked why San Juan County is not doing more road maintenance. San Juan County Commissioner Wallace Charley said that the state constitution's Anti-Donation Clause is an obstacle that needs to be amended before the county can act. A committee member questioned the county's interpretation of the clause, and the committee member noted that the Anti-Donation Clause had not created an obstacle for TIF and other capital outlay funding. After some discussion, Representative Clahchischilliage asked Mr. Charley to ask the San Juan County attorney to examine the Anti-Donation Clause and provide the committee with the rationale for the county's interpretation of it in regard to road maintenance.

A committee member asked if the NDOT receives a set amount of revenue for school bus routes. Mr. Bradley said that it did not. The NDOT works with the chapters to address their priority needs, but the \$6 million road budget does not go far. The Navajo Nation gets an additional \$54 million in federal funds for roads and uses up to 20% of that for maintenance. The rest of the funding goes for bridges and major construction projects. The NDOT tries to maintain at least 15 miles of roads per chapter, but the maintenance includes periodic grading of dirt roads.

Jeffery D. Bond, transportation coordinator, Gallup-McKinley County School Board, said that similar road issues are being addressed in McKinley County. Mr. Bond said that the biggest issue is with ownership of the road, which includes the BIA and private owners. McKinley County has a good working relationship with the Navajo Nation chapters within the county, but the BIA is an obstacle. He said that, traditionally, the BIA and all the families with property rights along a road need to sign off on a road-maintenance agreement. However, he said, the BIA rarely responds to the county's inquiries.

Committee members requested that representatives from the NDOT, San Juan and McKinley counties and the BIA be invited to the next meeting so that the committee can address this issue.

### **Shiprock Historical Society**

Eugene B. Joe, chief executive officer, Shiprock Historical Society, Inc., presented a proposal to purchase a building for a museum and visitor center, which would be run by the Shiprock Historical Society. The Shiprock Historical Society is a nonprofit organization founded in 2010 to increase public awareness and preserve the unique history of the Four Corners area. Mr. Joe said that the society has members from 19 Navajo Nation chapters in New Mexico, Arizona and Utah. The society's goals are to document all aspects of history in the area, including military history, the founding of settlements and the culinary changes that have occurred in the area. The society publishes four magazines a year covering different topics, such as the history of veterans and the Navajo code talkers. He said that the biggest consumers of the magazines have been the schools.

Mr. Joe said that the society is seeking \$250,000 to purchase a building and its surrounding land and \$400,000 to renovate the building.

### **Newcomb Chapter**

David Randolph, Sr., president, and Lawrence John, chapter manager, Newcomb Chapter, Navajo Nation, gave a presentation on the chapter's infrastructure priorities. (See handout.) Mr. Randolph said that the chapter sits along U.S. Highway 491 and has facilities that serve many neighboring communities. Mr. John said that the majority of projects within the chapter's infrastructure capital improvement plan are those for road maintenance, safety and erosion control. He then outlined four projects: 1) street lights for the intersection of U.S. Highway 491 and Navajo Road 5001, costing \$216,000; 2) a bridge and road project for Navajo Road 5007, costing \$1,380,000; 3) a medical emergency helipad, costing \$220,000; and 4) a natural gas pipeline project, costing \$1,725,000.

A committee member asked if the Newcomb Chapter had sought TIF funding for its road projects. Mr. John said that the chapter had requested TIF funding for its non-road project, but not for roads. He also said that the natural gas pipeline project would be done in phases because of the large total cost.

### **Impact of Uranium Mining and Cleanup**

Fernando Martinez, director, and David Clark, program manager, Mining and Minerals Division (MMD), Energy, Minerals and Natural Resources Department (EMNRD), gave the committee an overview of the history of uranium-mine regulation and cleanup in New Mexico. (See handout.)

Mr. Martinez said that most of the uranium mines are located in the Grants mineral belt. Mining activity was most prevalent during the period of the 1940s to 1960s, before most of the current environmental statutes and regulations were in place. The EPA has developed a five-year plan for mine cleanup, which involves participation from universities; tribal, state and federal agencies; and local communities. The objectives of the 2016-2020 EPA plan include identifying local water supplies, determining the degree of contamination and establishing long-term

management of uranium tailings sites. Often, there is no longer an existing mining company that can be held liable for cleanup costs of abandoned mine sites. He said that the federal and state agencies with jurisdiction over the mine sites (like the MMD) are working through cleaning up these abandoned sites and are about to start work on the Spencer mine.

Mr. Martinez said that the Tronox company's bankruptcy settlement secured approximately \$900 million for cleanup of the former Kerr-McGee sites on Navajo land. The next step in the cleanup process is a December meeting scheduled with Tronox partners.

Paul Robinson, research director, Southwest Information and Research Center, reviewed some of the long-term effects of uranium mining in New Mexico and provided some ideas on how the state could move forward on the issue. (See handout.) He called the viability of the uranium industry into question, stating that world uranium prices are too low to make mining profitable and that 75% of licensed capacity is now idle.

Mr. Robinson said that a key health risk from uranium mine sites is the migratory nature of contaminated water. To address the ongoing problem, he proposed that the legislature: 1) establish an abandoned mine fund; 2) pursue cleanup funds from companies with inactive mines now, while those companies still exist; 3) reestablish a legislative task force on uranium mines; and 4) re-post the draft task force report from 2009 on the legislature's website.

Jordon Johnson, coordinator, McKinley Community Place Matters, provided an assessment of health impacts from uranium mining. (See handout.) Mr. Johnson said that uranium mines create ongoing problems for local communities. He said that the Red Water community has had to be moved out four times and will need to be moved again in a few years to accommodate cleanup operations. Mr. Johnson said that the Red Water community has reported that residents are experiencing posttraumatic stress issues because of the disruptions in their lives and the uncertainty of health risks that they may experience.

Responding to questions, Mr. Martinez said that the MMD believes it now has a good inventory of abandoned mine sites. There are about 260 abandoned uranium mines in New Mexico, but half of these have not been remediated. He said that no one has a good estimate of the total cost for cleanup of those mines. The MMD oversees the permitting of new mines. Permittees are now required to submit a reclamation plan and provide financial assurances for the plans' implementation. The last major call on a reclamation bond may have been for the Arroyo coal mine in 1981, and that resulted in a good reclamation. Jurisdiction for mine cleanup overlaps among the MMD, the NMED, the Office of the State Engineer and other agencies. There are three mines in the permitting process currently; one new one and two that are coming off of inactive status.

A committee member asked about the health studies cited in the handout, and Mr. Robinson said that Navajo miners were used as baseline cohorts for studying the health impacts of smoking in mines. He also said that the 2009 report elaborates on the cancer rate studies cited

in his handout. Mr. Robinson noted that one family had to be permanently relocated because of uranium contamination and that 115 residents of Red Water have been moved temporarily several times.

Asked by a committee member about the long-term prospects for the uranium industry, Mr. Robinson said a continued decrease in the number of active nuclear power plants over the next few years is likely.

### **Kirtland Youth Association Request**

Charles W. Kromer, executive director, Kirtland Youth Association (KYA), presented a proposal for capital outlay to complete a youth activity and service building. (See handout.)

Mr. Kromer said that the KYA is a combined Boys & Girls Club and service organization. The KYA provided breakfast, lunch and other services to 840 children ages five-14 in 2014. He said that the KYA received some funding for phase one of the building, and phase one was completed in 2011. However, the building sat empty until a sewer line was built to service it. Seventy-eight organizations currently use the building.

Mr. Kromer said that the KYA's current request for \$1,300,000 would be used to build phase two of the project. Phase two will add kitchen and classroom space to the building. The KYA has an agreement with the federal Indian Health Service to provide a family doctor and a pediatrician two days a week if the KYA can provide examination rooms. The classrooms can double as examination rooms, Mr. Kromer said. He said that phase two is a shovel-ready project, and the KYA operates the facility with no state funding, so investment in this infrastructure would have a multiplier effect for the state with respect to services provided to the community.

### **Recess**

The committee recessed at 4:07 p.m.

### **Friday, October 2 — Huerfano Chapter House**

### **Invocation, Welcome and Status Update**

Wilson Ray, Sr., president, Huerfano Chapter, Navajo Nation, gave an invocation and welcomed the committee to the Huerfano Chapter. He thanked the committee and the legislature for its assistance to Navajo chapters and the Navajo Nation.

### **Venting and Flaring**

Jon Goldstein, senior energy policy manager, Environmental Defense Fund, gave a presentation on the benefits and challenges of using natural gas as a power source. (See handout.) He said that the use of natural gas or methane has the potential to increase national energy security and reduce air pollution. However, Mr. Goldstein said, wasting natural gas through flaring, venting or well leakage can undermine some of the benefits of natural gas.

Mr. Goldstein said 7,000,000 metric tons of methane are lost each year nationally through waste, which is enough to meet the heating and cooking needs of 530,000 homes. He said that the waste in New Mexico alone represents \$101 million in lost product. Mr. Goldstein noted that waste methane has large short-term impacts on climate change. Compared to carbon dioxide, methane is 84 times more effective at retaining atmospheric heat over the first 20 years when released into the atmosphere, but its efficiency drops over time. He also said that waste methane can combine with other pollutants to cause respiratory health risks. Mr. Goldstein told committee members that National Aeronautics and Space Administration (NASA) satellite data have revealed a methane hotspot over the San Juan Basin.

Mr. Goldstein said that certain states have had larger flaring activities from oil production because the infrastructure in these oil-producing activities had not been set up to capture the resultant natural gas. He said that the North Dakota oil fields are an example of this, flaring as much as one-third of the produced natural gas. Mr. Goldstein noted that government agencies and industry are changing their perspectives on waste gas, and he pointed to goals set by Colorado to achieve zero emissions, which are the result of roundtable discussions between industry and environmental organizations.

#### **Allottees: A Conversation about Oil and Gas Development on the Checkerboard Lands**

Etta Arviso, Navajo allottee and board member, Diné Medicine Man Association, said that area residents need government services, such as schools, police and health care. Instead, residents are getting natural gas extraction sites and lots of truck traffic hauling chemicals. She said that the local communities have not received information on whether the companies can contain spills or leaks, and she expressed concern about potential contamination with hazardous materials and the potential effects on wildlife that these activities bring to the community. She said that the community needs to see plans and pictures of how retention wells will be constructed for wastewater, and she requested that monitoring reports be posted at the chapter houses in the drilling areas.

Delora Hesuse, Navajo allottee, said that her father was an allottee leader and that her own view is that the laws and regulations governing natural gas drilling are adequate to protect the environment and cultural artifacts. She said that she had personally examined extraction sites and was very impressed by the process and monitoring of environmental impacts. She felt the industry has a clear priority of safety. She then said that she was speaking for many people who are not as tied to past places and practices. She said that she was speaking for people looking to make business arrangements. She said that some sites are claimed to be sacred but have had development on them for many years.

#### **Oil and Gas Industry Perspective on Oil and Gas Development in the Region**

Virgil Chavez, superintendent of capital projects, ConocoPhillips Company, provided an example of the job creation provided by the oil and gas industry and gave an overview of the concepts of venting and flaring. (See handouts.) He said that ConocoPhillips is the largest producer of natural gas in the state and has 750 employees and about 1,000 contractors.

However, he said that it has been a tough year for natural gas prices and that industry layoffs are expected in the near future.

Mr. Chavez said that the industry uses pressure releases on storage tanks, and the EPA estimates that leaks account for less than 1% of natural gas releases. He said that flaring is often resorted to when a well produces natural gas with impurities, such as nitrogen, that pipeline companies will not accept. A producer is then left with the choice either to vent or flare. He said that the industry supports capturing more natural gas, and ConocoPhillips is working on new technology to minimize lost gas. ConocoPhillips has reduced emissions by 50% since 2013, Mr. Chavez noted.

Wally Drangmeister, director of communications, New Mexico Oil and Gas Association (NMOGA), said that methane is a major product for NMOGA members. The NMOGA has concerns about the costs and benefits of various regulation proposals. He said that the Environmental Defense Fund study inadequately examined the economics and the scope of the problem and that using it as a basis for regulation might close a greater number of wells than necessary.

Mr. Drangmeister then summarized the on-the-ground impacts of natural gas drilling in the Chaco Canyon area. (See handout.) He showed a map of the well locations and said that the sites closer to Chaco Canyon are older wells, and the newer wells are located about 10 miles away in the Mancos Shale area.

In the ensuing committee discussion, an audience member said that allotments are quasi-private land within the Navajo Nation. They are subject to some Navajo Nation, state and federal regulations, but allotments are not really part of the Navajo Nation, the audience member said. The Navajo Nation is starting to work out a process of buying these lands back.

Committee members discussed the need to balance preservation of the land with economic development. Concerns were also voiced over abandoned well sites and the need to ensure adequate reclamation efforts once a well shuts down. A committee member asked about the industry's public outreach and efforts to preserve Chaco Canyon. Mr. Drangmeister said that the NMOGA had a "good neighbor" program and will send a representative to discuss the natural gas industry and the industry's activities to any group, organization or school that requests a presentation. He also said that the industry must comply with all the regulations set by the EPA and the various land managers, including the National Park Service, and it uses horizontal drilling techniques to avoid surface impacts at significant sites.

A committee member asked about the typical period for temporary venting and flaring. Mr. Drangmeister said that it varies, but it is typically less than two weeks for flaring, which mostly occurs during the start-up of a well. For venting, he said pressure controllers are installed for the life of the well, and most companies have similar programs to the ConocoPhillips program to replace the high-bleed valves with low-bleed ones.

Responding to a question concerning market prices and projected royalties, Mr. Drangmeister said that the price of oil has been holding at around \$45.00 a barrel, and natural gas has been stable at around \$2.50 per thousand cubic feet without much seasonal flux. He said that while prices have been down, the state is seeing record production, and he would provide LCS staff with the most recent revenue study.

Asked about the methane hotspot in the NASA satellite data, Mr. Drangmeister said that there is little information on where the methane is coming from. The hotspot includes some methane from natural gas production, as well as methane from coal production and agriculture.

### **Environmental Perspective on Oil and Gas Development in the Region**

Colleen Cooley, energy outreach organizer, Diné Citizens Against Ruining our Environment (Diné CARE), and Mike Eisenfeld, San Juan Citizens Alliance, briefed the committee on environmental concerns of area residents with respect to oil and gas development. (See handout.)

Ms. Cooley said that various aspects of oil and gas activity are a cause for concern, including that the U.S. Bureau of Land Management (BLM) permitted drilling activities for 240 wells using hydraulic fracturing (fracking) methods that were not included in the BLM's most recent resource management plan for the area. She said that the BLM has classified these as exploratory wells but that the impact seems to be the same as that for full development. She raised a concern that 30% to 50% of fluid used in fracking operations is left in the ground and could contaminate drinking water sources. She said that local residents have not seen any monitoring of water supplies that are near the wells. She said Diné CARE conducted door-to-door surveys of area residents and has heard of concerns over air pollution from production sites.

Ms. Cooley also voiced concerns about inadequate emergency response infrastructure to support industry development and inadequate public education and communication programs about the industry. She recommended a moratorium on the use of fracking pending the results of several studies on the practice.

### **Executive Branch Perspective on Oil and Gas Development in the Region**

Scott Dawson, deputy director, Oil Conservation Division (OCD), EMNRD, briefed the committee on the development of a new state energy policy and implementation plan. (See handout.)

Mr. Dawson said that the OCD looks at both the geology and the engineering aspects for drilling units. He said that many wells in the San Juan Basin produce over 150,000 barrels in their first year. Noting that oil production in the San Juan Basin has increased dramatically over the last six years, he said that the use of horizontal drilling has reduced the potential impact on the landscape. Horizontal drilling allows several wells to be drilled from the same drilling pad.

Mr. Dawson discussed the state's new energy policy, which was announced on September 8, 2015. He said that the state had not updated its policy since 1991, and the EMNRD held eight listening sessions around the state in the development of the new policy. The goals of the policy are to promote economic growth and job creation. Points of emphasis in the new policy include access to federal lands, streamlining regulatory requirements and addressing the nexus between energy and water. He said that with an eye to job creation, all energy sources are part of the plan, and the state will consider appropriate incentives to increase market potential.

Mr. Dawson said that a major element of the policy is to promote energy infrastructure, including promoting new and expanded oil refinery capacity within the state. At the same time, the state will be working to recruit new manufacturing companies to use the production output or to develop state-of-the-art energy technologies.

Responding to questions, Mr. Dawson said that most permit applications have been preliminarily reviewed by a land management agency, such as the BLM or the State Land Office, prior to being submitted to the OCD. In those cases, the OCD is primarily focused on the engineering and geologic aspects of the permit application. No applications have been denied by the OCD.

Addressing concerns about accidents and potential contamination from well sites, Mr. Dawson said that all spills must be reported within 24 hours, and the OCD monitors the cleanup. When an operation drills through ground water, the process is to use fresh water for drilling, then install and cement a pipe. He said that Rule 34 provides direction on recycling and reuse of oilfield-produced water. Mr. Dawson said that the OCD currently has 17 well inspectors and is advertising for nine additional ones. He said that inspectors generally see 18 to 20 wells per day, and there are roughly 63,000 well sites in the state. The OCD's performance measure is to inspect 37,500 wells per year. Mr. Dawson said that the OCD refers penalty enforcement cases to the attorney general. A court ruling in 2009 requires those cases to be filed in the county in which the infraction occurred.

### **Federal Government Perspective on Oil and Gas Development in the Region**

Victoria Barr, Farmington district manager, BLM, said that the BLM is in the process of developing an amendment to the 2003 resource management plan for the San Juan Basin. She said that this was being done with collaboration among the National Park Service, San Juan County and the Ojo Encino Chapter of the Navajo Nation, and she said that other Navajo Nation chapters had been invited. Speaking about agency responsibility under various federal laws, Ms. Barr said that the BLM is responsible for the base environmental analysis required by the National Environmental Policy Act of 1969 and that the BLM is doing that in consultation with the BIA. The BIA and tribal governments have the lead on the analysis required by the federal Native American Graves Protection and Repatriation Act, and the U.S. Fish and Wildlife Service is the permitting agency for incidental take permits.



Ben Shirley, transportation supervisor, BIA, said that his focus is on stretching available dollars to upgrade BIA roads in the region. He said that most BIA roads had not been constructed to meet large traffic demands from heavy load trucks.

Responding to questions from committee members, Ms. Barr said that federal approvals for drilling depend on the site in question. If the site is an allotment, the BIA approves the surface lease and the BLM issues a subsurface permit. If the allottee owns the mineral rights, the royalties go to the allottee. On allottee land, the BLM retains inspection and enforcement authority. However, the BLM has Indian Self-Determination and Education Assistance Act contracts with the Navajo Nation and the Jicarilla Apache Nation for inspection and enforcement. The rights of way for access roads on allottee and tribal lands are issued by the BIA. On public lands, the BLM has a system of rights of way for the state or counties to construct roads. In those cases, the BLM must complete a connected actions analysis as part of its environmental impact review.

A committee member asked who would be responsible for reconstructing a road that was damaged by heavy truck hauling, for which it was not designed. Ms. Barr said that it would depend on the terms and conditions of the right of way. Some counties require bonding for access roads, so the hauling or drilling company might be liable.

### **Adjournment**

There being no further business before the committee, the committee adjourned at 2:40 p.m.